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Before the
Federal Communications Commission
Washington, D.C. 20554

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AUG - 8 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	
Spnnt Petition for Declaratory Ruling on Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers	)	DA 02-1740

Comments **of** Triton PCS License Company, L.L.C.

Triton PCS License Company, L.L.C. ("Triton PCS"), by its attorneys, hereby submits its comments on the Sprint Corporation Petition for Declaratory Ruling in the above-referenced proceeding.[1] Triton PCS supports the Sprint Petition and urges the Commission to grant it forthwith, without waiting for resolution of the ***Zntercarrzer Compensation Rulemaking.'***

In previous filings, Triton PCS has explained the importance of the issues raised by the Sprint Petition and the reasons the Commission should grant the relief sought by Sprint.[3] In particular, BellSouth's claim that it cannot interconnect with wireless providers for purposes of routing traffic to NXX codes with rating points outside BellSouth's service territory is contrary to the Commission's rules and to common sense. **As** a matter of common sense, so long as the interconnection takes place within a carrier's territory, the carrier cannot be deemed to have

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1 Sprint Corporation Petition for Declaratory Ruling, Obligation of Incumbent **LECs** to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, filed May 10, 2002 (the "Sprint Petition"). The Commission requested comments and incorporated the Sprint Petition into the intercarrier compensation proceeding by a public notice issued on July **18,2002.** Public Notice, "Comment Sought on Sprint Petition for Declaratory Ruling Regarding the Rating and Routing of Traffic by ILECs," DA **02-1740** (rel. July 18, 2002).

Developing a Unified Intercarrier Compensation Regime, ***Notice of Proposed Rulemaking,*** 16 FCC Rcd 9610 (2001) (the ***"Intercarrier Compensation Rulemaking")***

3 Copies of those filings are attached hereto as Exhibits 1, 2 and 3. Triton PCS hereby requests that they be incorporated into the record **of** this proceeding.

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provided service outside that territory.[4] Further, under the Commission's rules, all incumbent local exchange carriers are required to interconnect with other carriers at a single point within each LATA and are not permitted to discriminate among carriers in providing interconnection. If an ILEC, such as BellSouth, were permitted to deny interconnection to wireless providers for "out-of-territory" NXX codes, then both of these requirements would be violated.[5] In addition, the Commission should not delay action in this matter until completion of the ***Zntercarrier*** *Compensation* ***Rulemaking*** because BellSouth's position poses a significant threat to wireless interconnection throughout its region.[6]

For all these reasons, Triton PCS License Company, L.L.C. respectfully requests that the Commission grant the Sprint Petition forthwith.

Respectfully submitted,

TRITON PCS LICENSE COMPANY, L.L.C.

J.G. arrington
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August 8,2002

[4] **See** Exhibit 1 at 5-6. Indeed, under BellSouth's logic, it would not be permitted to interconnect with any other incumbent local exchange carriers ("ILECs"), since their NXX codes obviously have rating points outside BellSouth's territory.

[5] ***See id.*** at **4-5;** Exhibit **2** at 2-3.

[6] ***See*** Exhibit 2 at 3; Exhibit 3 at 1-3.

EXHIBIT 1

Triton PCS Comments in Georgia/Louisiana Section 271 Proceeding

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc.	)	CC Docket No. 02-35
	)	
For authorization *to* provide in-region, interLATA service in the States of Georgia and Louisiana	)	

COMMENTS IN OPPOSITION OF TRITON PCS LICENSE COMPANY, L.L.C.

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ITS ATTORNEYS

MARCH 4,2002

SUMMARY

On January 30, 2002, BellSouth informed Triton of a new interconnection policy. Under this new policy, BellSouth will not provide direct interconnection to NXX codes with rating points outside BellSouth's franchise area, even for calls from BellSouth customers directly to Triton customers. This new policy is contrary to the requirements of sections 251(c)(2) and (e) of the Communications Act and to the Commission's implementing rules. Consequently, BellSouth does not meet items one and nine of the "competitive checklist," and its application for interLATA authority in Georgia and Louisiana must be denied.

The new BellSouth policy violates section 251(c)(2) and the implementing rules because it denies Triton the ability to interconnect at any technically feasible point and, specifically, the ability to adopt a single point of interconnection with BellSouth in any LATA. The new policy also is discriminatory because BellSouth will interconnect with incumbent LECs that hold NXX codes with rating points outside the BellSouth area, but will not do so for other carriers. While BellSouth's memorandum announcing the policy claims this treatment is required by state law, there are no state decisions requiring this policy and, in any event, any such decisions would be superseded by federal law. Consequently, BellSouth fails checklist item one.

BellSouth's new policy also causes it to fail checklist item nine, which requires adherence to industry numbering guidelines and Commission numbering rules. By denying interconnection for NXX codes assigned by NeuStar, BellSouth usurps the authority given solely to NeuStar by the Commission. Further, the new BellSouth policy is contrary to both industry guidelines and the Commission's rules for NXX code assignments, which require carriers only to be authorized to serve a specific area before receiving an NXX code. Triton is unequivocally authorized to provide CMRS service in the geographic area where BellSouth is denying interconnection.

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc.	)	CC Docket No. 02-
	)	
For authorization to provide in-region, interLATA service in the States of Georgia and Louisiana	)	

COMMENTS IN OPPOSITION OF TRITON PCS LICENSE COMPANY, L.L.C.

Triton PCS License Company, L.L.C. ("Triton"), by its attorneys, hereby submits these comments in opposition to the above-referenced application (the "Application") of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively, "BellSouth").[1] As described below, BellSouth is not meeting its obligations to provide interconnection consistent with the requirements of Section 251(c)(2) of the Communications Act of 1934 (the "Act") and to comply with the Commission's rules governing numbering administration. Thus, BellSouth fails the first and ninth items on the "competitive checklist" under Section 271(c)(2)(B) and its joint application currently cannot be granted.

I. INTRODUCTION

Triton is a mid-sized provider of commercial mobile radio ("CMRS") wireless services with a regional presence in the southeastern United States. Triton's service area has a total population of approximately 13.5 million people and includes the states of North Carolina, South Carolina and Georgia. Triton exchanges traffic with BellSouth in each of these states via direct interconnection arrangements

[1] ***See*** Comments Requested on the Joint Application by BellSouth Corporation for Authorization Under Section **271** of the Communications Act to Provide In-Region, InterLATA Service in the States of Georgia and Louisiana, ***Public Notice,*** CC **Docket** No. **02-35,** DA 02-337 (rel. Feb. 14, **2002).**

established under interconnection agreements between the parties. Triton obtains numbering resources to serve its customers through the normal application process administered by NeuStar, and obtains codes in compliance with the Commission's rules and the Central Office Code Assignment Guidelines adopted by the Industry Numbering Committee?

Until recently, Triton had no significant interconnection disputes with BellSouth. On January 30, 2002, however, BellSouth sent a memorandum to Triton (and, presumably, other interconnecting carriers) outlining a new policy it will apply immediately across all its landline markets, including in Georgia and Louisiana, concerning the routing of calls to NXX codes with rating points outside the BellSouth franchise area.' Under this new policy, "BellSouth will not support activation of NPA/NXX applications where the rate center is in a company other than BellSouth and the routing center is in BellSouth."[4] Following receipt of this memorandum, Triton inquired as to its meaning and was informed that, effective on the date of the memorandum, BellSouth no longer would activate any new NXX code in its switches if the rating point for NXX code was outside the BellSouth franchise area? Further, if BellSouth identifies any currently-activated NXX code with a rating point outside the BellSouth franchise area, it will stop routing calls to that code directly from its switches. In either case, BellSouth expects the carrier holding the NXX code to establish direct interconnection with the incumbent LEC serving the location of the rating point and, apparently, BellSouth will then route its calls to that NXX through the other incumbent LEC's facilities.

These new requirements are in violation of BellSouth's existing interconnection agreements with Triton, which allow Triton to interconnect directly with BellSouth for transmission of all intra-MTA traffic originating in BellSouth territory. They also violate BellSouth's obligation to provide "just,

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[2] *See* Declaration of Donna Bryant (the "Bryant Declaration"), attached hereto as Exhibit 1, at 2; *see also* Central Office Code (NXX) Assignment Guidelines, INC 95-0407-0008, Jan. 7,2002 (the "CO Code Guidelines").

[3] A copy of the BellSouth memorandum is attached hereto as Exhibit 2.

[4] Exhibit 2 at 1

'Exhibit 1 at I.

reasonable and nondiscriminatory" interconnection at "any technically feasible point" on BellSouth's network under Section 251(c)(2) of the Communications Act and the Commission's rules. Further, BellSouth's failure to activate NXX codes assigned to Triton by NeuStar in its role as administrator of the North American Numbering Plan is a violation of the Commission's rules governing numbering administration.

This proceeding marks the first opportunity for Triton to bring these issues to the attention of regulators. BellSouth did not issue its memorandum until well after the Georgia and Louisiana commissions had completed their consideration of BellSouth's Section 271 applications and, further, Triton was unable to confirm that BellSouth intended to deny interconnection for certain NXX codes until after the Application was filed. Because BellSouth changed its interconnection policy only after the Georgia and Louisiana commissions had acted, they had no opportunity to consider BellSouth's new interconnection policy in their analysis of checklist compliance.

II. CHECKLIST ITEM 1: BELLSOUTH'S NEW INTERCONNECTION POLICY VIOLATES THE REQUIREMENTS OF SECTION 251(C)(2) OF TEE COMMUNICATIONS ACT AND THE COMMISSION'S IMPLEMENTING RULES.

As the Commission has explained, "Section 271(c)(2)(B)(i) requires the BOC to provide equal-in-quality interconnection on terms and conditions that are just, reasonable and nondiscriminatory in accordance with the requirements sections 251 and 252."[6] To meet this requirement, a BOC must, among other things, provide interconnection at any technically feasible point on its network and, in particular, must offer interconnecting carriers the opportunity to interconnect at a single point in each LATA if they so choose.' A BOC also must comply with Commission rules governing termination of local telecommunications traffic, including those rules specifically applicable to CMRS providers such as Triton. BellSouth's new interconnection policy violates these requirements for a number of reasons.

[6] Application of Verizon Pennsylvania Inc. *et al* for Authorization to Provide In-Region, InterLATA Services in Pennsylvania, *Memorandum Opinion and Order*, 16 FCC Rcd 17419, 17473 (2001) (footnote omitted).

[7] *Id.* at 17174, *see also* Joint Application by SBC Communications *et al*. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri, 16 FCC Rcd 20719, 20762 (2001).

First, BellSouth's policy violates the obligation to provide interconnection at a single point in each LATA if the interconnecting carrier so requests. Under the BellSouth policy, if a carrier chooses to locate the rating point for an NXX outside the BellSouth franchise area, it is not possible to interconnect directly with BellSouth to complete calls to that NXX. Rather, a carrier will have either to connect directly with BellSouth for some of its calls and indirectly for other calls, or interconnect indirectly with BellSouth for **all** of its calls.[8] Not only is this policy contrary to Commission requirements, it **also** imposes great inefficiencies and unnecessary costs on **CMRS** providers. BellSouth is effectively requiring direct interconnection with smaller incumbent LECs, even where call volume cannot justify the investment in direct facilities.

The new policy also violates BellSouth's obligation to interconnect with Triton (and other carriers) at any technically feasible point on BellSouth's network. It plainly **is** technically feasible for BellSouth to route calls from its customers to all Triton NXX codes associated with Triton's switch, regardless of the rating points associated with those NXX codes. Indeed, BellSouth has, up until now, followed Triton's routing instructions for all Triton's NXX codes.

In addition, BellSouth's new policy violates its obligation to provide interconnection on a nondiscriminatory basis. **As** the Commission explained in the *Local **Competition Order,*** "incumbent LECs may not discriminate against parties based upon the identity of the carrier[.]"[9] Under the new policy, however, BellSouth is doing just that: It is willing to provide interconnection to NXX codes held by other ILECs that serve areas outside BellSouth territory, but will not provide the same interconnection to Triton and other non-ILEC carriers that also serve those areas. Given that Triton does not seek that BellSouth activate NXX codes for areas where Triton is not authorized to provide service, there simply is no ***basis*** for any such discrimination.

[8] In some cases, the BellSouth policy could force other carriers to establish direct interconnection with dozens **of** other carriers, greatly increasing **the** cost of interconnection without **any** countervailing benefit.

[9] Implementation of the Local Competition Provisions of ***the*** Telecommunications Act of 1996, *First **Report and Order,*** 11 *FCC* Rcd 15499, 15612 (1996).

All of the Commission's prior determinations specifically apply to CMRS providers. The Commission's rules establish that ILECs are required to provide interconnection for all intraMTA traffic exchanged with CMRS providers. 47 C.F.R. § 51.701(b)(2) (defining intraMTA traffic as local traffic for interconnection purposes as between local exchange carriers and *CMRS* providers). Indeed, the applicability of these rules to CMRS providers has been upheld by the courts as well.[10] Consequently, any policy that prohibits routing of intraMTA traffic over direct interconnection facilities is in violation of Section 251(c)(2) and the Commission's implementing rules.

In its January 30 memorandum, BellSouth defends its new policy by claiming that routing calls to NXXs with rating points outside BellSouth territory could cause BellSouth and the interconnecting carriers "to violate state commission regulations under which they operate."" This claim is incorrect. First, BellSouth points to no specific state regulation and, to Triton's knowledge, there is no ruling by any state regulator in BellSouth's territory to that effect. Such a ruling would be nonsensical, because no ILEC has an exclusive right to serve a franchise area.[12] Consequently, there is no basis for insisting that interconnection between BellSouth and any carrier occur through the facilities of other ILECs.

Even if such state regulations existed, however, the Communications Act and the Commission's rules would supersede them. As described above, the interconnection requirements of Section 251(c)(2) and the Commission's rules implementing those requirements forbid BellSouth's new policy, and those requirements override any contrary state law or policy.[13] Second, the Commission specifically has been given the authority to govern all interconnection between ILECs and CMRS providers, to the exclusion of

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[10] *See Iowa Utils. Bd. v.* FCC, 120 F.3d 753, 800 n. 21 (8th Cir. 1997) (affirming FCC rules governing CMRS interconnection); *see generally Qwest Corporation v. FCC*, 232 F.3d 462 (D.C. Cir. 2001).

[11] *See* Exhibit 2 at 1

[12] The Communications Act specifically forbids states from barring entry into local telecommunications markets. 47 U.S.C. 253(a) (preempting entry harriers). Even rural ILECs that do not face competition from CLECs do not have exclusivity, as there generally are two or more wireless providers serving nearly every part of the country.

[13] *See AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 378-79 (1999) (FCC rules implementing 1996 Act preempt state authority). Even if, arguably. Section 251 and the Commission's rules did not preempt state authority, BellSouth's failure to meet the requirements of those provisions would prevent it from obtaining interLATA authority under Section 271. The competitive checklist contains no provision excusing BOC compliance if there is a conflict between federal and state law. 47 U.S.C. § 271(c)(2)(B).

state laws and policies.[14] Thus, BellSouth cannot depend on unarticulated state requirements to excuse its failure to meet its checklist ohligations and thus, BellSouth does not meet checklist item one,

III. CHECKLIST ITEM 9: BELLSOUTH'S NEW INTERCONNECTION POLICY VIOLATES THE COMMISSION'S RULES GOVERNING NUMBERING ADMINISTRATION.

Under the ninth item of the competitive checklist, a BOC must comply with the applicable "telecommunications numbering administration guidelines, plan or rules."" **As** the Commission has explained, a BOC must "demonstrate[] that it adheres to industry numbering assignment guidelines and Commission rules[.]"[16] BellSouth's new interconnection policy violates the Commission's numbering administration rules and, therefore, BellSouth cannot meet this item of the checklist if it intends to maintain its newly announced policy.

BellSouth's January **30** memorandum indicates that "[r]eview of the guidelines provided by NeuStar, which manages the national code administration system function, shows that applications of rating and routing centers must meet all regulatory requirements."" Relying on this very general statement of principle, BellSouth concludes that it will not activate NXX codes with rating points outside the BellSouth franchise area, In other words, BellSouth is interpreting NeuStar's general statement as specific permission for BellSouth to determine which codes it will activate and which ones it will not.

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[14] 47 U.S.C. § 332(c)(1)(B) (FCC determines CMRS interconnection requirements); ***see also Iowa Utils. Bd. v. FCC,*** 120 F.3d 753, 800 n. 21. Triton acknowledges that compliance with Section 332(c) is not a prerequisite for obtaining Section 271 authority. However, it is probative **of** a BOC's compliance with its obligations under Section 251(c)(2), especially if the violation leads to discriminatory provision of interconnection, which is prohibited by Section 251(c)(2). Further, a BOC's willingness to violate its obligations under Section 332 is relevant to the determination of whether grant of Section 271 authority is in the public interest, as it shows the extent to which a BOC is likely to continue to comply with regulatory requirements. ***See*** 47 U S.C. § 271(d)(3)(C); ***see also*** Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region InterLATA Service in the State of New York, ***Memorandum Opinion and Order,*** 15 FCC Rcd 3953,4162 (1999) (***"New York 271 Order")*** (public interest requirement is "an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the Congressional intent that markets be open").

[15] 47 U.S.C. § 271(c)(2)(B)(ix). This provision requires the BOC to provide "nondiscriminatory access" to numbering resources until a numbering administration regime is in place, and then to comply with the requirements of that regime. ***Id.*** Because the transition to a neutral administrator has been completed, BellSouth is required to comply with the Commission's numbering rules and associated policies to meet this requirement.

[16] *New* **York *271 Order,*** 15 FCC Rcd at 4136.

[17] Exhibit 2 at 1

This behavior is contrary to the Commission's rules governing activation of NXX codes and usurps the Commission's jurisdiction to set telephone numbering policy. BellSouth has no authority at all to determine whether Triton or any other carrier is using NXX codes properly. That authority is vested in the Commission, and through delegation under Section 251(e) of the Act, with NeuStar as numbering administrator and with certain state commissions.[18] The Commission specifically has delegated the power to determine whether to assign NXX codes to NeuStar, and has removed all NXX code administration functions from BellSouth and other ILECs.[19]

Under the rules, once NeuStar has determined that an NXX code can be assigned to Triton consistent with the CO Code Guidelines and the Commission's number assignment rules, BellSouth is not empowered to decide that the code assignment, Triton's proposed routing or Triton's proposed rating point is improper. Indeed, if BellSouth believes that Triton or any other carrier is using numbering resources improperly, its remedies lie with NeuStar or with the Commission. Self-help, such as BellSouth's new interconnection policy, is not an option."

Further, BellSouth is incorrect when it asserts that Triton cannot adopt rating points outside BellSouth's franchise area. The only service area requirement for assignment of an NXX code in the Commission's rules is that "[t]he applicant is authorized to provide service in the area for which the numbering resources are being requested[.]"[21] Plainly, Triton would not be requesting NXX codes that are not coincident with its service area. Similarly, the CO Code Assignment Guidelines require an applicant for an initial code in an area to demonstrate only "authorization and preparation to provide

[18] 47 U.S.C. § 251(e) (FCC has plenary authority over numbering and may delegate authority to a numbering administrator and to state regulators as it determines to be appropriate).

[19] 47 C.F.R. § 52.15 (delegating central office code administration to numbering administrator)

[20] In fact, concerns about arbitrary decisions by ILECs acting as state numbering administrators were an important factor in the Commission's initial request to the telecommunications industry to adopt guidelines for NXX code assignments in the mid-1990s, even before the 1996 Act was enacted. BellSouth's new policy, if permitted to remain in place, would allow ILECs to resume their previous status as gatekeepers in determining whether competing carriers would be allowed to obtain and implement NXX code assignments.

[21] 47 C.F.R. § 52.15(g)(2) (i).

service" before receiving a code.[22] The CO Code Guidelines also specifically recognize that the rating and routing points for an NXX code may differ.[23]

The criteria in the Commission's rules and in the Guidelines have been set in accordance with Section 251(e) and are the only ones that can be applied by any carrier. To the extent that BellSouth applies any additional requirements of its own to activation of NXX codes, it is usurping the authority of the Commission and NeuStar under Section 251(e) and the Commission's rules. The new BellSouth interconnection policy, by insisting that activation of NXX codes in BellSouth's switches depends on the locations of the rating points for those codes, rather than on whether NeuStar has assigned the codes, is simply beyond its authority. Consequently, the new policy violates the requirement that BellSouth comply with all numbering rules and guidelines, and BellSouth cannot satisfy checklist item nine with its new policy in place.

[22] CO Code Guidelines, § 4.1

[23] *Id.*, § 4.1, n. 14 ("Multiple NXX codes, each associated with a different rate center, may be assigned to the same switching entity/POI"). As described in Exhibit I, Triton routinely implements NXX codes with differing rating and routing paints and never has had an NXX code application denied for this reason. Exhibit I at 1-2.

IV. CONCLUSION.

For all these reasons, Triton PCS License Company, LLC, respectfully requests that the Commission deny BellSouth's Joint Application for authorization to provide in-region, interLATA service in the States of Georgia and Louisiana until such time as BellSouth rescinds its new interconnection policy.

Respectfully submitted,

TRITON PCS LICENSE COMPANY, L.L.C.

/s/ Laura H. Phillips
Laura H. Phillips
J.G. Harrington

Its Attorneys

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March 4, 2002

Exhibit 1

Declaration of Donna Bryant

DECLARATION OF DONNA BRYANT

1. My name is Donna Bryant. I am Director, Network Design and Interconnect of Triton PCS License Company, LLC ("Triton). I am making this declaration in connection with Triton's comments in opposition to the application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively, "BellSouth") for authority to provide in-region interLATA service in the states of Georgia and Louisiana.

2. In my role as Director, Network Design and Interconnect, I am familiar with the status of Triton's interconnection arrangements with BellSouth. I also am responsible for Triton's compliance with numbering resource requirements. The statements in this declaration are based on my personal knowledge.

3. I have reviewed the document attached to Triton's comments as Exhibit *2*. It is a true and correct copy of the memorandum sent to Triton by BellSouth on January 30, 2002.

4. Following receipt of the January 30 memorandum, I and others acting under my direction sought additional guidance from BellSouth concerning the new policy articulated in the memorandum and its effect on Triton. In particular, Triton sought to determine if it was BellSouth's intent to preclude direct interconnection with Triton for the purpose of routing calls to NXX codes with locations outside BellSouth's franchise areas. Triton was informed that this was the case. Further, BellSouth informed Triton that this policy would apply both to newly-activated NXX codes and to any existing NXX code once BellSouth determined that the code had a rating point outside BellSouth's franchise area.

5. Like many other wireless providers, Triton has a longstanding practice of separating the rating and routing points of many of its NXX codes. This practice reflects the large geographic areas covered by the switches used by wireless carriers. This practice also reflects the differences in network architecture between wireless providers and incumbent local exchange carriers, which usually have at least one switch in each local calling area.

Exhibit 2

BellSouth January 30 Memorandum

CERTIFICATE OF SERVICE

I, Cynthia S. Shaw, a legal secretary at Dow, Lohnes & Alhertson, PLLC do hereby certify that on this 4th day of March, 2002, copies of the foregoing **"COMMENTS IN OPPOSITION OF TRITON PCS LICENSE COMPANY, L.L.C."** were served via first-class mail, postage prepaid, on the following:

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"via Hand Delivery

/s/ Cynthia **S.** Shaw
Cynthia **S.** Shaw

EXHIBIT 2

Triton PCS Appril 5, 2002 Ex Parte in Georgia/Louisiana Section 271 Proceeding

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April 5,2002

RECEIVED

APR 0 5 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Joint Application by BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Georgia and Louisiana
CC Docket No. 02-35
WRITTEN EX PARTE PRESENTATION

Dear Mr. Caton:

I am writing on behalf of our client Triton PCS License Company, L.L.C. ("Triton"), in response to the March 20, 2002, letter of Sean A. Lev, counsel to BellSouth in the above-referenced proceeding.[1] As described in more detail below, Mr. Lev's letter seriously mischaracterizes the nature of the issue raised in Triton's comments in the proceeding. Moreover, the modification to BellSouth's interconnection policies, which BellSouth did not communicate to Triton, does not fully address the concerns that led Triton to file its comments. Consequently, BellSouth remains out of compliance with the requirements of checklist items one and nine.

Triton's comments showed that BellSouth had adopted a region-wide policy of refusing to interconnect with NXX codes with rating points outside the BellSouth territory. As described in Triton's comments, that policy violated BellSouth's obligation to interconnect under Section 251(c) of the Communications Act (the "Act") and the Commission's rules and also with its obligation to comply with numbering administration requirements under Section 251(e) of the Act and the Commission's rules. BellSouth does not deny that it adopted this new policy just before filing the Section 271 applications that are the subject of this proceeding or that the effect of its policy was to deny interconnection to Triton and other carriers that are using numbering resources in accordance with the Commission's rules and the policies of NeuStar as numbering administrator. Indeed, BellSouth's defense bas little to do with the actual issue raised by Triton.

[1] Letter from Sean A. Lev , counsel to BellSouth, to William Caton, Acting Secretary, FCC, March 20, 2002 (the "Lev Ex Parte").

First, BellSouth claims that the issue raised by Triton is a matter of the appropriate compensation for carrying calls to and from Triton subscribers.[2] This is wrong. Neither BellSouth's initial policy nor its revised policy contains any reference to failure to pay appropriate compensation. Rather, both apply whenever a carrier activates an NXX code with a rating point outside BellSouth territory.[3] Further, as described in the Declaration of Donna Bryant, attached hereto as Exhibit 1, BellSouth never has told Triton that this is an issue of compensation from Triton or that BellSouth would be willing to carry traffic to and from out-of-territory NXX codes if appropriately compensated by Triton. Instead, BellSouth has insisted flatly that it will not carry such traffic.

Moreover, to the extent there were any issue of compensation for the "extra" costs of carrying traffic to and from out-of-temitory NXX codes, Triton would not be responsible for those costs. In the example that BellSouth uses in its letter, the traffic originates with another incumbent LEC, and therefore the incumbent LEC would be responsible for transiting fees or whatever other costs it incurred from BellSouth for transport of the traffic. In fact, in BellSouth's example it is not the CMRS provider that is "using BellSouth's facilities," but the independent ILEC, and so the independent ILEC should compensate BellSouth appropriately.[4] For calls from BellSouth customers to Triton customers, BellSouth incurs no additional costs at all, and indeed may avoid having to pay fees to independent LECs. Further, to the extent that calls from BellSouth customers to Triton NXX codes are rated as toll calls, BellSouth also will collect toll revenues from those customers.[5]

BellSouth also fails to acknowledge that it is subject to the Commission's rules governing CMRS interconnection. For instance, the Lev Ex Parte complains that BellSouth may be deprived of access charges when a CMRS rating point is in an independent ILEC's territory and the CMRS provider's MTSO is in BellSouth territory.[6] However, the Commission's rules specifically provide that landline-CMRS traffic shall be treated as local traffic – not access traffic

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[2] *See, e.g.*, ***id.*** at 2 ("Nextel and Triton cannot explain why they should not compensate BellSouth for the costs that they cause BellSouth to incur in transporting this traffic.").

[3] *See* Triton Comments, Exhibit 2; Lev Ex Parte, Attachment **A.**

[4] Lev ***Ex*** Parte at 2. In this regard, BellSouth's quotation from Triton's comments in the ***Intercarrier Compensation*** proceeding is inapposite. Triton, of course, is willing to pay any relevant transport costs it incurs in using BellSouth's facilities to send a call from its switch to an independent ILEC's switch, and it makes such payments to BellSouth and other carriers today. Such costs are not at issue, here, however, because BellSouth's policy did not address such traffic.

[5] Even if this were a dispute over whether BellSouth should he compensated for carrying calls to Triton, BellSouth's position **would** be inconsistent with Commission precedent. In the *TSR Wireless* decision, the Commission held that an ILFC cannot impose charges on a CMRS provider for delivery of traffic that originates and terminates within the same MTA. TSR Wireless, LLC v. U **S** West Communications, Inc., ***Memorandum*** *Opinion and Order*, 15 FCC Rcd I I I66 (2000 (holding that LECs may not charge for either transport or facilities for traffic they deliver to paging companies), *aff'd sub* ***nom.*** *Qwest* ***Corporation*** *v. FCC*, 252 F.3d 462 (D.C. Cir. 2001). Thus, BellSouth would not he entitled to compensation under any scenario.

[6] Lev Ex Pane at 2. In fact, BellSouth appears to believe that the practice of separating rating and routing points **is** Improper. It is, however, standard procedure in the wireless industry, and indeed among CLECs, because it would he inefficient in the extreme to require carriers to deploy switches in each rate center where they provide service.

– whenever it is contained within a single MTA.[7] There is no exception to this rule for calls that originate from or terminate to the "territory" of another ILEC. Thus, BellSouth is not being deprived of any access revenue. Moreover, the route a call travels is irrelevant to the question of whether access charges (or toll charges) apply; all that BellSouth or any other carrier considers are the originating and terminating points of the call.

BellSouth's revised policy, while somewhat less oppressive than its January 30 policy statement, does not remedy the problem. Under the January 30 policy, BellSouth flatly refused to interconnect with out-of-territory NXXs, at any price.' Under the new policy, BellSouth will initially interconnect with such NXX codes, but then "will seek a declaratory ruling" from state regulators.' This threat to litigate cannot be seen as anything other than an effort to intimidate CMRS providers and others that seek to obtain interconnection. Moreover, as did the earlier policy, it puts BellSouth in the position of deciding which carriers are compliant and non-compliant. Those that act as BellSouth wishes will not be subject to litigation and the possibility of having to rearrange their networks. Those that do not follow BellSouth's dictates, on the other hand, run the risk of lengthy, drawn-out regulatory proceedings and expensive network reconfigurations. Indeed, if BellSouth were serious about wanting to resolve this issue, it would not threaten individual carriers with litigation, but instead would seek a declaratory ruling from this Commission or generic rulings from the relevant state commissions. The threat to litigate, consequently, is intended only to coerce interconnecting carriers into foregoing their interconnection rights. Thus, as described in the Triton Comments, BellSouth continues to violate its obligations under checklist item one, in that it refuses to provide interconnection in accordance with the statute and the Commission's rules.'" Further, because BellSouth is basing its interconnection determinations on a faulty interpretation of the Commission's numbering rules and the policies of NeuStar as numbering administrator, BellSouth remains in violation of checklist item nine as well."

Finally, the Commission should consider these issues in this proceeding. The grounds BellSouth suggests for not doing so are entirely insubstantial. First, as shown above, this is not a dispute over the terms of interconnection agreements or the compensation to be paid by Triton to BellSouth and consequently it is not the subject of any pending Commission proceeding. Second, this is not a "carrier-to-carrier" dispute, in that it involves BellSouth's region-wide interconnection policies; in fact, two different companies filed comments on the same policy. Third, BellSouth's resort to its tariffs is unavailing. Triton has not disputed the interpretation of BellSouth's tariffs, which were mentioned for the first time in the Lev **Ex** Parte. The tariffs are irrelevant, however, in light of the requirements of federal law. It is, after all, BellSouth's compliance with federal requirements, not its tariffs, that is at issue in this proceeding.

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[7] 47 C.F R. § 51.701(b)(2).
'Triton Comments, Exhibit 1 at 1
[9] Lev **Ex** Parte at 3
[10] Triton Comments at 3-6.
[11] *Id.* at 6-8.

In accordance with the requirements of Section 1.1206 of the Commission's Rules, an original and one copy of this written ex parte communication are being filed with the Secretary's office on this date.

Respectfully submitted,

J.G. Harrington
Counsel to Triton PCS License Company, L.L.C.

Attachment

cc (w/attach.): Renee Crittendon
Susan Pie
Leon Bowles
Arnold Chauviere
Qualex

EXHIBIT 1

Declaration of Donna Bryant

DECLARATION OF DONNA BRYANT

1 My name is Donna Bryant. I am Director, Network Design and Interconnect of Triton PCS License Company, L.L.C. ("Triton"). I am making this declaration in connection with Triton's response to the March 20, 2002, letter from Sean A. Lev, counsel to BellSouth, to William Caton, Acting Secretary of the FCC (the "Lev Ex Parte"), in the Commission's proceeding concerning the application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively, "BellSouth") for authority to provide in-region, interLATA service in the states of Georgia and Louisiana

2 In my role as Director, Network Design and Interconnect, I am familiar with the status of Triton's interconnection arrangements with BellSouth. As described in more detail in my earlier declaration in this proceeding, I also am familiar with the discussions between Triton and BellSouth concerning BellSouth's January 30, 2002, memorandum concerning its policy for interconnection with other carriers. I participated personally in many of those discussions and the others occurred under my direction.

3. I have read the Lev Ex Parte, including in particular its characterization of the dispute between Triton and BellSouth as a "compensation issue." This characterization is incorrect The question of compensation between Triton and BellSouth for interconnection to NXX codes with "out-of-territory" rating points has never been raised during any conversation or correspondence in which I participated in the time before and following BellSouth's issuance of its January 30 memorandum. Further, my inquiries to those acting under my supervision indicate that the issue of compensation from Triton to BellSouth did not arise in any other interactions with BellSouth on this topic. The first time I became aware that BellSouth would characterize this as a question of compensation between Triton and BellSouth was when I read the Lev Ex Parte.

4 BellSouth never has offered to carry "out-of-territory" traffic to and from Triton for an additional charge paid by Triton, or for that matter, under any conditions at all. The only communications Triton has received from BellSouth have indicated that BellSouth either will not carry traffic to and from NXX codes with rating points outside BellSouth territory or that BellSouth will seek regulatory confirmation of its claim that it cannot carry such traffic.

I declare under penalty of perjury that the foregoing is true and correct

Dated April 4, 2002

D E Bryant

Donna Bryant

EXHIBIT 3

Triton PCS June 6 Reply to BellSouth Opposition

STAMP & RETURN

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Sprint Petition for Declaratory Ruling	)	WT Docket No. 02-___
	)	
Obligation of Incumbent LECs to Load	)	
Numbering Resources Lawfully Acquired	)	
and to Honor Routing and Rating Points	)	
Designated by Interconnecting Camers	)	

Reply of Triton PCS License Company, L.L.C.

Triton PCS License Company, L.L.C. ("Triton PCS"), by its attorneys, hereby submits its reply to the Opposition of BellSouth Corporation and BellSouth Telecommunications (collectively, "BellSouth") in the above-referenced proceeding. For the reasons described below, the Commission should issue the declaratory ruling requested by Sprint Corporation forthwith.'

The Opposition argues that the Sprint Petition should be denied because (1) BellSouth is not currently preventing Sprint from loading NXXs; (2) BellSouth believes that intrastate tariffs should apply and, therefore, the issue should be resolved at the state level; and (3) the issue is part of the Commission's existing intercarrier compensation proceeding.[2] None of these reasons justifies denial of the Sprint Petition and, in fact, there are significant reasons for the Commission to grant the relief requested by Sprint.

First, Commission action in this matter is warranted because this is not just **a** dispute between Sprint and BellSouth. BellSouth's policies concerning calls to "out of territory" NXX

[1] Sprint Corporation Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, filed May 10, 2002 (the "Sprint Petition").

'Opposition at 2, 3, 4.

codes arc set on a region-wide basis, and so affect all carricrs that interconnect with BellSouth in a nine-state territory. Indeed, as BellSouth acknowledges, Sprint is not the first carrier to bring this issue before the Commission: Both Triton PCS and Nextel raised concerns about BellSouth's treatment of NXX codes lawfully activated by wireless providers in the recent Georgia-Louisiana Section 271 proceeding.[3] In other words, this matter is of broad concern, affecting multiple carriers in multiple states. Consequently, it is a significant national matter that deserves the Commission's attention.

Second, there is no reason for this matter to be considered by the states because it is uniquely federal. The issues raised by Sprint specifically are federal issues because they involve wireless interconnection and violation of an existing federal rule. **As** the Eighth Circuit has held, the Commission determines interconnection policy and rules for commercial mobile radio services, not the states. *Iowa Utilities Bd. v. FCC,* 120 F.3d 753, 800 n.21 (8th Cir. 1997) (holding that Section 332 gives the FCC full power over wireless interconnection), *rev'd in part AT&T v. Iowa Utilities Bd.,* 525 U.S. 366 (1999) (on appeal of other issues). Moreover, Sprint and other affected carriers seek confinnation from the Commission that BellSouth is bound by Section 51.701(b)(2) of the rules: which states that all traffic "that, at the beginning of the call, originates and terminates within the same Major Trading Area" shall he treated as local traffic.[4] Interpretation of this rule is entirely a matter for the Commission, and state commissions have no authority to determine BellSouth's compliance or noncompliance with its obligations under this federal provision. In this context, it does not matter that BellSouth is relying on state tariffs.

[3] *See* Joint Application of BellSouth Corporation, BellSouth Teleconununications, Inc. and BellSouth Long Distance. Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana. *Memorandum Opinion and Order,* CC Docket No. 02-35, FCC 02-147 (rel. May 15, 2002), ¶ 207.

[4] 47 C.F.R. § 51.701(b)(2). Notably, this provision does not contain any exceptions for traffic that originates or terminates outside **an** incumbent LEC's franchise area.

The only question is whether BellSouth's actions, under tariff or otherwise, violate a federal obligation.

Similarly, BellSouth's claim that this issue is part of an ongoing proceeding is irrelevant.[5] The possibility that the Commission might change its rules has no effect on BellSouth's obligation to follow the current rules while they remain in place. Contrary to BellSouth's argument, granting Sprint's petition does not require the Commission to adopt any "new policy."[6] Rather, the Commission need only confirm that its existing rules mean what they say.

Finally, it would be administratively inefficient for the Commission, as BellSouth suggests, to rely on state commissions to address the concerns described by Sprint, Triton PCS and Nextel. It would waste time and resources for BellSouth and interconnecting carriers to repeat their arguments from state to state across the BellSouth region. Moreover, allowing these issues to be litigated in nine different states would make it highly likely that there would be inconsistent results, which would necessitate Commission intervention to ensure a uniform national policy.

[5] BellSouth's position also is incorrect. The intercarrier compensation proceeding does not address the question of a carrier's obligation to interconnect, which is the central issue here. It addresses only how carriers will be compensated.

[6] Opposition at 4.

For all these reasons, Triton PCS License Company, L.L.C. respectfully requests that the Commission grant the Sprint Petition forthwith

Respectfully submitted,

TRITON PCS LICENSE COMPANY, L.L.C.

By: _____
J.G. Harrington
Christina H. Burrow

Its Attorneys

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June 6,2002

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow, Lohnes & Albertson, PLLC do hereby certify that on this 6th day of June, 2002, copies of the foregoing "Reply of Triton PCS License Company, L.L.C." were served as follows:

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* Denotes delivery by hand.

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow, Lohnes & Albertson, PLLC do hereby certify that on this 8th day of August, 2002, copies of the foregoing "Comments of Triton PCS License Company, L.L.C." were served as follows:

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